

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE APRIL 20, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1268

Introduced by Senator Simitian

February 19, 2010

An act to add Chapter 8 (commencing with Section 31490) to Division 17 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1268, as amended, Simitian. Toll bridges, lanes, and highways: electronic toll collection mechanisms: disclosure of personal information.

Existing law authorizes development and implementation of various electronic bridge and highway toll collection mechanisms.

This bill would prohibit a transportation agency, as defined, from selling or providing personally identifiable information of a person obtained pursuant to the person's participation in an electronic toll collection system or use of a toll facility, subject to specified exceptions. The bill would require a transportation agency to establish a privacy policy regarding personally identifiable information in that regard and to provide the policy to subscribers and post the policy on its Internet Web site. The bill would allow a transportation agency to store certain personally identifiable information of a person and would require it to discard other information within a designated time period. The bill would authorize a person whose personally identifiable information has been sold or provided in violation of the bill to bring specified actions for recovery of damages, costs, and attorney's fees. *The bill would*

authorize a transportation agency to impose an administrative fee to implement these provisions, as specified. By imposing new duties on local transportation agencies, the bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8 (commencing with Section 31490) is
2 added to Division 17 of the Streets and Highways Code, to read:

3
4 CHAPTER 8. ELECTRONIC TOLL COLLECTION SYSTEMS

5
6 31490. (a) Except as otherwise provided in this section, a
7 transportation agency may not sell or otherwise provide to any
8 other person or entity personally identifiable information of any
9 person who subscribes to an electronic toll collection system or
10 who uses a toll bridge, toll lane, or toll highway that employs an
11 electronic toll collection system.

12 (b) A transportation agency that employs an electronic toll
13 collection system shall establish a privacy policy regarding the
14 collection and use of personally identifiable information and
15 provide to subscribers of that system a copy of the privacy policy
16 in a manner that is conspicuous and meaningful, such as by
17 providing a copy to the subscriber with the transponder or other
18 device used as an electronic toll collection mechanism, or, if the

1 system does not use a mechanism, with the application materials.
2 A transportation agency shall conspicuously post its privacy policy
3 on its Internet Web site. For purposes of this subdivision,
4 “conspicuously post” has the same meaning as that term is defined
5 in paragraphs (1) to (4), inclusive, of subdivision (b) of Section
6 22577 of the Business and Professions Code. The policy shall
7 include, but need not be limited to, a description of the following:

8 (1) The types of personally identifiable information that is
9 collected by the agency.

10 (2) The categories of third-party persons or entities with whom
11 the agency may share personally identifiable information.

12 (3) The process by which a transportation agency notifies
13 subscribers of material changes to its privacy policy.

14 (4) The effective date of the privacy policy.

15 (5) The process by which a subscriber may review and request
16 changes to any of his or her personally identifiable information.

17 (c) A transportation agency may, within practical business and
18 cost constraints, store only personally identifiable information of
19 a person such as the account name, credit card number, billing
20 address, vehicle information, and other basic account information
21 required to perform account functions such as billing, account
22 settlement, or enforcement activities. All other information shall
23 be discarded six months after the closure date of the billing cycle
24 or 60 days after the bill has been paid, whichever occurs last.

25 (d) A transportation agency shall take every effort, within
26 practical business and cost constraints, to purge the personal
27 account information of an account within 60 days after the date
28 the account is closed or terminated. In no case shall a transportation
29 agency maintain personal information more than 150 days after
30 the date an account is closed or terminated.

31 (e) (1) A transportation agency may make personally
32 identifiable information of a person available to a law enforcement
33 agency only pursuant to a search warrant. Absent a provision in
34 the search warrant to the contrary, the law enforcement agency
35 shall immediately, but in any event within no more than five days,
36 notify the person that his or her records have been obtained and
37 shall provide the person with a copy of the search warrant and the
38 identity of the law enforcement agency or peace officer to whom
39 the records were provided.

(2) (A) This section does not prohibit a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would result in an imminent danger to the health or safety of a member of the public. The peace officer shall provide the transportation agency with a written statement setting forth the basis for his or her good cause belief.

(B) When obtaining personally identifiable information of a person, the peace officer shall immediately, in any event within no more than five days, notify the person that his or her records have been obtained, identify the law enforcement agency or peace officer to whom the records have been provided, and provide the person with a copy of the written statement provided to the transportation agency pursuant to subparagraph (A) that sets forth the basis for his or her good cause belief. If the notification to the person would interfere with an ongoing investigation, the peace officer or law enforcement agency may request a court order for a 30-day extension of the notice requirement.

(f) This section does not prohibit a transportation agency in subdivision (a) from providing aggregated traveler information derived from collective data that relates to a group or category of persons from which personally identifiable information has been removed.

(g) This section does not prohibit a transportation agency from providing the license plate number of an intermodal chassis to the owner of the chassis for purposes of locating the driver of the chassis in the event the driver fails to pay the toll.

(h) This section does not prohibit a transportation agency from sharing data with another transportation agency solely to comply with interoperability specifications and standards adopted pursuant to Section 27565 regarding electronic toll collection devices and technologies. A third-party vendor may not use personally identifiable information obtained under this subdivision for a purpose other than described in this subdivision.

(i) Subdivision (d) shall not prohibit a transportation agency, or its designee, from performing financial and accounting functions such as billing, account settlement, enforcement, or other financial activities required to operate and manage the toll facilities.

(j) This section does not prohibit a transportation agency from communicating exclusively about its toll-related products and services offered by itself or the agency with which it contracts to subscribers of the transportation agency through a contracted third-party vendor using personally identifiable information limited to the subscriber's name, address, and electronic mail address, provided that the transportation agency has received the subscriber's express written consent to receive the communications.

(k) A transportation agency may not use a nonsubscriber's personally identifiable information obtained using an electronic toll collection system to market products or services to that nonsubscriber.

(l) For purposes of this section, "transportation agency" means the Department of Transportation, the Bay Area Toll Authority, any entity operating a toll bridge, toll lane, or toll highway within the state, or any entity under contract with any of the above entities.

(m) For purposes of this section, "electronic toll collection system" is a system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber's account or to establish an obligation to pay a toll.

(n) For purposes of this section, "person" means any person who subscribes to an electronic toll collection system or any person who uses a toll bridge, toll lane, or toll road that employs an electronic toll collection system.

(o) For purposes of this section, "personally identifiable information" means any information that identifies or describes a person, including, but not limited to, travel pattern data, address, telephone number, e-mail address, license plate number, photograph, bank account information, or credit card number.

(p) (1) In addition to any other remedies provided by law, a person whose personally identifiable information has been knowingly sold or otherwise provided in violation of this section may bring an action to recover either actual damages or two thousand five hundred dollars (\$2,500) for each individual violation, whichever is greater, and may also recover reasonable costs and attorney's fees.

(2) A person whose personally identifiable information has been knowingly sold or otherwise provided three or more times in violation of this section may bring an action to recover either actual

1 damages or four thousand dollars (\$4,000) for each individual
2 violation, whichever is greater, and may also recover reasonable
3 costs and attorney's fees.

4 ~~SEC. 2. If the Commission on State Mandates determines that~~
5 ~~this act contains costs mandated by the state, reimbursement to~~
6 ~~local agencies and school districts for those costs shall be made~~
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
8 ~~4 of Title 2 of the Government Code.~~

9 *(q) Nothing in subdivisions (c) and (d) shall preclude*
10 *compliance with a court order or settlement agreement that has*
11 *been approved on or before April 25, 2010.*

12 *(r) A transportation agency that employs an electronic toll*
13 *collection system may impose an administrative fee on persons*
14 *who use that system in an amount sufficient to cover the cost of*
15 *implementing this section.*

16 *SEC. 2. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *a local agency or school district has the authority to levy service*
19 *charges, fees, or assessments sufficient to pay for the program or*
20 *level of service mandated by this act, within the meaning of Section*
21 *17556 of the Government Code.*